



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,200	11/16/2001	Samuel Cavallaro	2000P09062US01	3398

7590 02/13/2006

Jack J. Schwartz & Associates
1350 Broadway
Suite 1507
New York, NY 10018-7702

EXAMINER

VO, LILIAN

ART UNIT PAPER NUMBER

2195

DATE MAILED: 02/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/991,200	CAVALLARO ET AL.	
	Examiner	Art Unit	
	Lilian Vo	2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-8 are pended for examination.

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-6, and 8 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-3,6, 9-10, 12-13, 15, and 16-19 of U.S Patent No. 6793625. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art (hereafter AAPA), in view of Aiko (Japan Patent No. 404155405), and further in view of Bollella (U.S. Patent No. 6466962).

4. As per claim 1, AAPA teaches a critical care workstation, comprising:

a display device (fig. 1);

a processor (fig. 1);

coupled to the display device, executing (fig.1);

a general purpose operating system, controlling execution of a selected non-real-time application program for displaying images representing non-real-time data on the display device (fig. 1, specification, page 3, lines 12-14); and

a real-time kernel, controlling execution of a process for displaying images representing real-time data on the display device (specification, page 3, lines 10-12, 1-18) concurrently with display of the non-real-time data (specification, page 3, lines 24-28).

AAPA did not specifically teaches that wherein the general purpose operating system and the real-time kernel are both arranged to execute as processes on the

processor using a common operating system kernel; and circuitry, responsive to user input, for selecting the non-real-time display program from among a plurality of available non-real-time display programs.

1. Aiko teaches real-time and non-real-time OS, displaying simultaneous data on a multi-CPU system (abstract, constitution section).

5. Bollella teaches that the multi-CPU's are on the same computer system and controlled by a managing component (fig. 4; col. 5, lines 38-67; col. 6, lines 1-49; col. 13, lines 10-42).

6. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have combined the teaching of AAPA, Aiko and Bollella because AAPA teaches that the data displayed by a real-time OS is ECG data and data displayed by general OS is image data. Therefore when combined with Aiko and Bollella would allow for simultaneous display of real-time and non-real-time clinical data on the same clinical system.

7. As per claim 2, AAPA teaches the general purpose operating system executes concurrently with and independent from the real-time kernel (specification, page 3, lines 16-21).

8. As per claim 3, AAPA teaches a system that both images representing real time data and images representing non-real time data such as laboratory results, x-rays, trend data, ventilator loops, etc. by the doctor's selection (specification, page 3, lines 5-9). It would have been obvious for one of an ordinary skill in the art at the time the invention was made to have recognized that the system must also include a storage device which coupled to the processor, wherein the plurality of available non-real time application programs are stored on the storage device and the general purpose operating system selects one of the stored plurality of non-real time application programs that responsive to user input in order for the doctor to switch between the programs.

9. As per claim 4, AAPA teaches a system that can display both images representing non-real time data such as laboratory results, x-rays, trend data, ventilator loops, etc. by the doctor's selection (specification, page 3, lines 5-9). It would have been obvious for one of an ordinary skill in the art at the time the invention was made to have recognized that system must also include a storage device that stores code and data presenting the non-real time application programs to be executed by the processor that responsive to user input in order for the doctor to switch between the programs.

10. As per claim 5, AAPA teaches a server and client system which operates and communicates through a network (specification, page 1, lines 25 – page 2, line 6) and a system that can display both images representing non-real time data such as laboratory

results, x-rays, trend data, ventilator loops, etc. by the doctor's selection (specification, page 3, lines 5-9). It would have been obvious for one of an ordinary skill in the art at the time the invention was made to have recognized that the system server is capable of storing the plurality of available non-real time application programs and the general purpose operating system selects one of the stored plurality of non-real time application programs that responsive to user input in order for the doctor to switch between the programs.

11. As per claim 6, AAPA teaches a server and client system which operates and communicates through a network (specification, page 1, lines 25 – page 2, line 6) and a system that can display both images representing non-real time data such as laboratory results, x-rays, trend data, ventilator loops, etc. by the doctor's selection (specification, page 3, lines 5-9). It would have been obvious for one of an ordinary skill in the art at the time the invention was made to have recognized that system must also include a storage device that stores code and data presenting the non-real time application programs to be executed by the processor that responsive to user input in order for the doctor to switch between the programs.

12. As per claim 7, AAPA teaches the real-time data is physiological data (specification, page 2, lines 7-15).

13. As per claim 8, AAPA teaches a displayed image concurrently displays both non-real time and real time data (specification, page 3, lines 24-28).

Response to Arguments

14. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lilian Vo whose telephone number is (571) 272-3774.

The examiner can normally be reached on M-T 6AM- 3:30 PM, F 6AM- 2:30 PM.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lilian Vo
Examiner
Art Unit 2195


MENG-AI AN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100